IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No. 1201

THE UNITED STATES OF AMERICA,
EX REL. CONSTANTINOS KARPATHIOU,
Petitioner,

vs.

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, CHICAGO DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HARRY G. JOHNSON,
Attorney for Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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Summary of Argument.

A. The decision rendered herein is in conflict with the decisions of several other Circuit Courts of Appeal on the same matter.

B. The decision of the United States Circuit Court of Appeals departs from the accepted and usual course of judicial proceedings of like matter.

C. The decision of the United States Circuit Court of Appeals is in conflict with applicable decisions of this court.

D. The decision of the United States Circuit Court of Appeals has sanctioned such a departure by the Department of Labor in like matter, as to call for an exercise of the Supreme Court's power of supervision.

E. The Petitioner, by the ruling of the Department of Labor, has been deprived of his liberty without due process of law and in violation of the Fifth Amendment of the Constitution of the United States of America.

F. No order for Deportation has been made by the Secretary of Labor.

Cases Cited.

Statutes Cited.

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PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Judges of the
Supreme Court of the United States:

Petitioner, CONSTANTINOS KARPATHIOU, prays the issuance of a Writ of Certiorari to review the decision by the United States Circuit Court of Appeals of the Seventh District, rendered February 18, 1946, in case 8851, in that the court affirmed the judgment of the District Court of the United States. The United States District Court dismissed the Petition of your Petitioner for a Writ of Habeas Corpus.

CONSTANTINOS KARPATHIOU,
By HARRY G. JOHNSON,
His Attorney.

STATEMENT OF FACTS.

This action came before the District Court upon a Petition for a Writ of Habeas Corpus on behalf of Constantinos Karpathious, Petitioner herein, against Andrew Jordan, District Director of Immigration at Chicago, Illinois. The Petition alleged that the Petitioner was restrained and imprisoned by the said Andrew Jordan by virtue of a certain pretended warrant of arrest issued on the 14th day of January, 1934; further alleged that after his arrest, a hearing was had before the Immigration Inspector at Milwaukee, Wisconsin and that after said hearing the Petitioner was informed that on the 7th day of July, 1938, a warrant for his deportation had been issued by the Secretary of Labor at Washington, D. C.

The Petition further alleged that the said warrant of deportation is void and issued without authority of law for the following reasons:

1. That your Petitioner is lawfully entitled to remain in the United States.
2. That said warrant of deportation was not sustained by any evidence at the hearing afforded your Petitioner by the Inspector in charge of Immigration and Naturalization at Milwaukee, Wisconsin.
3. That your Petitioner was not afforded a full and fair hearing by the Department of Labor or by the Inspector in charge of said hearing.
4. That no legal evidence was heard by the Inspector or by the Department of Labor upon which the deportation warrant could legally be predicated.
5. That your Petitioner was not found as a matter of fact managing a house of prostitution or music or dance hall or other place of amusement and that no evidence supporting said charge was adduced before the Inspector or Department of Labor in said hearing.

6. That your Petitioner was denied the right to cross-examine witnesses which right is guaranteed him by the Constitution of the United States.

7. That said Andrew Jordan, District Director of Immigration at Chicago, Illinois, or any other officer having custody of Petitioner has no warrant whatsoever for the commitment or detention of Petitioner.

That upon the filing of said Petition and notice to the District Attorney, an order was entered granting leave to respondent to file a reply or motion to dismiss said Petition within five days and said motion was set for hearing June 1st, 1945.

That thereafter on the 29th day of May, 1945, the respondent filed in the Clerks office his Motion to dismiss the Petition. Said Motion set forth: "The Petitioner was arrested on October 28, 1936 by Immigrant Inspector Lawrence Giesking on warrant of arrest issued by the Secretary of Labor, dated October 27, 1936. He was accorded hearings pursuant to said warrant of arrest on October 27, October 29 and November 6, 1936 and on November 18, 1937. At each of these hearings he was represented by counsel. The Secretary of Labor having considered the evidence directed the Petitioner's deportation to Greece on the charge that the Petitioner is subject to deportation under Section 19 of the Immigration Act of February 5, 1917 in that he is employed by, in, or in connection with a house of prostitution; and that he is an inmate of a house of prostitution. The Petitioner was released under bond of One Thousand Dollars ($1000.00) pending deportation. When he was surrendered by the surety for deportation on July 16, 1938, he filed a Petition for Writ of Habeas Corpus which was issued by this Court on July 16, 1938 under Habeas Corpus Cause No. 47. After due hearing upon the Petition, Honorable Charles

E. Woodward, Judge of this Court, dismissed the Writ of Habeas Corpus and remanded the Petitioner to the custody of the District Director of Immigration and Naturalization at Chicago, Illinois. The Petitioner appealed to the Circuit Court of Appeals for the 7th Circuit and on October 20, 1939 that Court affirmed the order of the United States District Court. This case is reported in 106 F. 2d 928. The Petitioner then appealed to the United States Supreme Court and certiorari was denied. (60 Sct. 721, 309 U. S. 681, 84 L. Ed. 1024.) The record which was certified to the Circuit Court of Appeals may be found in Habeas Corpus Cause No. 47 which is a part of the official records of this Court. A copy of the decision of the Circuit Court of Appeals is attached hereto, made a part hereof and marked Exhibit One (1).

The Court is further informed that the Petition for Writ of Habeas Corpus now before this Court is identical with the original Petition which was dismissed by this Court and which order of dismissal was affirmed by the Circuit Court of Appeals and certiorari was denied by the United States Supreme Court. No new issues of any kind are raised by the new Petition.

Wherefore your respondent respectfully moves the Court to dismiss the Petition for Writ of Habeas Corpus filed herein."

A hearing on said Petition and Motion was had on June 1st, 1945, and an order entered dismissing said Petition.

Notice of Appeal to the United States Circuit Court of Appeals, Points of errors relied upon for reversal, Praecipe for Transcript of record and several stipulations were duly filed and appear in the Record. The Abstract of the testimony also appears in the Transcript of the Record filed herein.

Exhibit Two was a record of hearings accorded the Petitioner on October 29, November 6, and August 18, 1937. Exhibit Three is a copy of the warrant of deportation dated January 14, 1938 and signed by Turner W. Battle, an Assistant to the Secretary of Labor, directing Petitioner's deportation.

Thereafter, Petition for appeal to the United States Circuit Court of Appeals was filed granting said appeal and ordering said Petitioner admitted to bail pending the final determination of his appeal; and thereafter the Relator filed his assignment of errors in the said District Court and an order was entered upon Stipulation of Counsel, that the original file, papers and records may be considered by the United States Circuit Court of Appeals in lieu of a certified copy of same. A praecipe for transcript of record was duly filed. Notice of appeal was served upon the United States District Attorney.

THE EVIDENCE.

In order to properly present the issues in this case to this court, it will be necessary for us to quote quite extensively from the evidence.

CONSTANTINOS KARPATHIOU:
Also known as GUS PHILLIPS.

I was born September 15, 1888, in Vathy, Greece. I now live at Route #3, Beaver Dam, Wisconsin. My occupation is that of a cook. I am employed by May Phillips in the Willow Inn at Beaver Dam. I live at the same place where I am employed. I have been employed there about three years at $35.00 a month, board and room. I am not married. (Married to an American born woman on February 21, 1938, at Dubuque, Iowa.) I entered the United States September 23, 1907, New York, as a 3rd class passenger. Examined by United States Immigrant Inspector Paid my head tax. I applied for my first papers on February 4, 1935 at Fond du Lac, Wisconsin. (Papers granted.) I have never committed a crime or misdemeanor. The only time I was arrested was for reckless driving, for which I paid a fine of $5.00 and cost. I have never been the inmate of a house of prostitution or managed such or assisted in the management of such, nor been employed in or connected with such a place. I have never managed a dance or music hall, or any place frequented by prostitutes, or derived any benefits therefrom or shared in the earnings of a prostitute. Nor have I assisted, protected, promised protection, transport, or solicit men for prostitutes. I am acquainted with Kanelos Paskos. I have known him for about four years. I met him when I was working in a

restaurant at Fond du Lac. Everything he said about me in his statement is a lie. I have never known Pat Murphey or Hazel Vebeldt. I came to this country when I was a kid, and I have been here for thirty years and have not violated any laws and I tried to become an American citizen. I have spent all of my life in this country. I am 48 years of age. Whatever those people said about me is not true. What Paskos said about me is not true. He has a grudge against me. I do not see why I should be deported. I did not violate any law.

WALTER BUSCHKOPF:

I am Sheriff of Dodge County, and live at Juneau, Wisconsin. I have never had any reports, and my investigators never found any conditions at Willow Inn which would indicate that it was being run, or conducted as a house of ill fame.

WILLIAM HALL:

I live at Beaver Dam, Wisconsin. I am cashier of the Farmers' State Bank. I have been in the banking business for 25 years and know the property known as Willow Inn. During the sale of this property to May Phillips, I have had occasion to go to the Willow Inn. On those occasions I did not notice anything that would in any manner indicate that the place was being conducted as a disorderly house or a house of ill fame. The place had not had a reputation of being referred to as a disorderly house. To my knowledge, it is not known as a house of prostitution. I know the alien, Gus Phillips. His reputation in Beaver Dam is very good. I know Kanelos Paskos. His reputation in Deaver Dam is very poor, and his reputation for truthfulness is none too good. I would not believe him under oath. I have seen Gus Phillips once or twice a

month. I go to the Willow Inn practically every month, sometimes twice a month.

HENRY KRUEGER:

I live at Beaver Dam. My occupation is that of a farmer and Assemblyman. I have lived in Beaver Dam practically my entire life. I have been an Assemblyman for the past four years and have been re-elected. I have been Town Chairman for the Town of Beaver Dam for a number of years. As such Chairman, one of my duties is to issue tavern licenses. I know where the Willow Inn is. I have never had any complaint of any nature against that tavern. The application for license was made by May Phillips and granted to her. I have known Gus Phillips for about three years. I have never heard anything derogatory to his reputation and have never heard anything bad about him. I know Kanelos Paskos. He made an application for a license in the name of some other name and the license was not granted, and he made several threats against me at that time. I know he has been arrested several times. While I was Chairman, no complaints were made to me about the Willow Inn, or May Phillips. The Town Board has a committee to make investigations. While I was in the Willow Inn I never observed anything that would indicate to me that the place was being run as a house of ill fame.

EMMERSON WALDHIER:

I live at Beaver Dam. My occupation is that of a jeweler for the past 17 years. I know the premises known as Willow Inn, and May Phillips. I have business dealings with her. I also know Gus Phillips and Kanelos Paskos. I have known Phillips for about three years. As far as I know you can't find a cleaner cut man than Gus Phillips. In fact, I never heard anything bad about him. I have

stopped by the Willow Inn several times. I have never heard that the place was being conducted as a house of ill fame, and when there I did not notice anything out of the way. I know that Kanelos Paskos has not got a good reputation. The first I knew of him was when he killed a man and served time for it. I would absolutely not believe him under oath. I would say that Phillips is a very much respectful sort of a fellow and could be trusted. May Phillips owns and manages the Willow Inn. I have been there several times and when there I never noticed any women hanging around there.

HARRY BEN HENDLER:

I live at Beaver Dam, Wisconsin. I am managing a fruit Market. I know the premises known as Willow Inn and Gus Phillips, as well as May Phillips. I have known them for about 2½ years. I know that May Phillips is the owner of those premises. I have been there quite often. I have never heard that the reputation of Willow Inn was that of a house of ill fame, and it has always borne a good reputation. When I was there nothing ever happened that would indicate that it was being conducted as a house of ill fame. I have never been solicited by anyone there. It has always been operated as a good clean tavern. I know Kanelos Paskos. I know that his reputation is the opposite of being a law abiding citizen. His reputation is bad. I would not believe him under oath. Such is his general reputation in Beaver Dam.

ARTHUR J. CISCO:

I run a market at Beaver Dam. I know Gus Phillips for about three years. I also know May Phillips. I have been at Willow Inn several times. When there I did not notice anything about the place being operated as a house of ill

fame. No woman ever solicited me there. I never knew anything bad about Gus Phillips, and the Willow Inn has a good reputation.

GUS ANTONOPOULOS:

I run a shoe shining parlor and hat cleaning shop at Beaver Dam. I know Constantinos Karpathiou for the past three years. I have been to the Willow Inn with my family several times. I never noticed anything about the place that would indicate to me that it was being run as a house of ill fame. The place, since run by May Phillips, always had a reputation of being a good clean place, and Gus has a reputation of being a very nice fellow. I never heard anything bad about him. I know Paskos since he was a kid in the old country. I know he was arrested in Greece. His reputation in Beaver Dam is very bad. I would not believe him under oath. Miss Phillips manages the Willow Inn. I have never seen Gus Phillips manage it. The only thing I saw him do there was working in the yard. I never noticed any women hanging around or loitering around the place.

TOM ELLAN:

I am tavern keeper at Beaver Dam. I have lived there for 26 years. I know what is going around the country. I never heard anything bad about the Willow Inn, or May Phillips. Ever since I have known Gus Phillips, everyone seems to think he is a good fellow. I have stopped by the Willow Inn very often. No one there solicited me. It is run as an ordinary tavern. I know Kanelos Paskos for 25 or 26 years. I know he has been arrested several times. I do not think his reputation is very good. I have often heard that the Willow Inn is the cleanest place in the country.

GUST THOMAS:

I am working at a tavern. I have known Constantinos Karpathiou since 1932. I met him while working in a restaurant at Fond du Lac. I know the place known as Willow Inn. In fact, I used to have the place myself. I sold the place to May Phillips in 1933. While I had the place I never ran it as a house of ill fame. I have been back there quite a few times. I have never heard anything wrong about the place. I have never been arrested. All I ever saw Gus Phillips do there was to clean up and working around the place.

MIKE VOURGANAS:

I am a tavern keeper. I have lived in Fond du Lac for the past twenty years. I know Gus Phillips. He has a good reputation.

MIKE FAGAS:

I work on the W. P. A. It is not true that I got my wife to go to work at the Willow Inn to practice prostitution. She don't know what she is talking about. She can't read and understand nothing and is very nervous. She told me she was working there for $6.00 a week. We have been married for 3 years. She is very sick. I had the doctor only last night. She is expecting a baby. She does not know what she is talking about at all. The doctor told me she did not know the difference between wrong and right.

DANIEL M. FREITAG:

I am a soda water manufacturer and wholesale dealer. I live at Beaver Dam. I have been to the Willow Inn very often. During the time I was out there, I never noticed anything in connection with the operation of the place that would indicate that it was being run as a house of ill fame.

I never heard anything derogatory about Gus Phillips. I never thought Gus Phillips was managing the Willow Inn. His only work is sweeping or cleaning up the place. The only women I saw there were always escorted.

STEVE CONES:

I work in a tavern in Fond du Lac. I am married and have nine children. I know Gus Phillips since 1931. I have been to the Willow Inn quite often. Whenever I went there no women ever solicited me. I never saw any women hanging around there. I know that May Phillips manages the place. I have known her since 1933. I know that Gus Phillips is only working at the Willow Inn.

JOHN J. O'MARA:

I am Deputy Clerk of the Courts for Dodge County, Wisconsin. As such Clerk I have charge of the Records of the Circuit Court of Dodge County. In reference to criminal cases, I have checked the record of Kanelos Paskos. I find a conviction against him on February 16, 1914 of being guilty of 3rd degree murder, sentenced to 4 years in Waupun. Another conviction on February 8, 1936, charged with the violation of the State Liquor Laws and charged with a fine of $100. These convictions were never reversed.

MAY PHILLIPS:

My occupation is that of a tavern keeper in Beaver Dam. I have never been arrested. I have known Gus Phillips for 4 or 5 years. He is working for me now. I am the owner and manager of the business. I am paying him $35.00 per month. I know Kanelos Paskos. I have not been on friendly terms with him since I let him go for taking money out of my cash register and he told me then he was going to get even with me and said he was going to send Gus back to the old country and put me out of the business.

That was about two years ago. He lives just across the street. I never had any paper made out so it would look as if I was married to Gus. It is not true that the girls working for me were practicing prostitution. The place is run as a straight tavern. I am positive that there is no prostitution carried on. I never had any girls brought there for the purpose of practicing prostitution. My trade is a nice clean class of trade of traveling people. The girls absolutely never give me any money. I have never been called on the carpet by either the local, county, or state authorities in connection with the conduct of my business.

GUST PHILLIPS:

Kanelos Paskos' statement that I am proprietor of the Willow Inn is not correct. I never did own the Willow Inn and have no interest therein. I have worked there about three years. While I was working there I have never observed anything that would indicate that prostitution is being carried on. I have never received any money which was derived from the business of prostitution. It is not true that the girls did pay me $1.00. I never received any such money. My salary is $35,00 a month with board and room. On the 27th of last month only one girl was working there. She was cooking and cleaning. It is not true that I was arrested in Akron at the time and jumped a $1,000 bond, or shot a cop. It is not true that I was in Fond du Lac in 1931 and had a beer flat and two girls hustling for me. I never did have a beer flat. While I have been at the Willow Inn, there never has been any prostitution carried on. While I have been there, there has been periodical inspection by the Sheriff's Office and Town Office, but there has never been any trouble.

KANELOS PASKOS:

I was arrested in Rockford for carrying a gun, and arrested last year in Beaver Dam for selling beer without a license. I was also arrested and fined $25.00 in cost for driving a car without a license. I went to the Court House about a year ago to find out whether or not Gus Phillips was the owner of the building. I also asked the Registrar of Deeds to look up whether or not Gus Phillips was a citizen.

E. E. SCHUMACHER:

I am an attorney and acquainted with Gus Phillips. I have been District Attorney for the past two years. During that time I have never had any complaint against the Willow Inn. We have had under cover men working around the Western part of Dodge County, checking up taverns and road houses, and have had at least four places pad locked. There was nothing to indicate that the Willow Inn was conducted as a house of prostitution. I have never heard by reputation or otherwise, that the Willow Inn was run as a house of prostitution. As far as I know it has a good reputation and is frequented by a nice class of people. There never has been a complaint either against the place or against May Phillips or Gus Phillips.

MIKE NEUMAN:

I frequently stopped at the Willow Inn. I know a man by the name of Gus there, who appeared to be the proprietor and bartender, as far as I know. I have been there about three times in the last year. The last time about six months ago. There was a girl there, but I do not know whether it was his wife or whose wife. There are usually one or two girls there. I never talked to them. I never heard that the girls were prostitutes. I have known

the place for a long time for one thing, but all I ever knew about it was that it was like the other places in the country. You could get drinks there. I do not know May Phillips. I never had anything to do with any of the girls there except to buy a drink. I was never solicited by any of the girls.

GEORGE GROLING:

I have been Chief of Police in Beaver Dam since 1915. I know the road side inn by the name of Willow Inn. I suspected that he was married to Mrs. Phillips. I never heard that the place had any girls there. I never heard any reports about the place. The letter you showed me addressed to the Department contains only hearsay. I never knew that there was a girl there. I stopped there for a glass of beer and there were no girls there at that time. I know that the Sheriff, during the last three years has been cleaning up these road houses. I know that in October these investigators were through the entire county. The only reason I say that May Phillips is the wife of Gus Phillips, is she told me her name was Mrs. Phillips.

LAWRENCE GIESKING:

I am United States' Immigration Inspector at Milwaukee, Wisconsin. I have been assigned to investigate violations of the Immigration Laws in around Milwaukee the last two or three years. The statement you show me is a true statement of what Marie Theresa Gastro Martin made to me on November 17, 1936. She has since been deported to Mexico.

CLARA FAGAS:

I do not remember the Inspector Giesking. After they left I fainted and did not hear my baby for one month. At the time the Inspectors were there, I was sick, being

pregnant. I was nervous and excited. Some Greek fellow came there and told me to answer all those questions. He said if I did not tell the truth they would put me in jail. I did not tell the truth because I did not do that kind of business. I was not that kind of a girl. I was a decent girl. I told them I was a decent kind of a girl and working there. That was the truth. I never told him I went to bed with men for money. He did ask me about other girls there and I told him that the time I was working there, there was no other girls there. While I was working there, I never went to a doctor for examination. I do not know what a prostitute is, or what it means for girls to do tricks. I do not know Pat Murphey. I never heard of her. I do not know Johnny Sartino. I got married about three weeks after I left there. If I answered that Gus Phillips was the manager of Willow Inn, that was not right. The reason I said this was at the time I did not know what to say, yes or no. I fainted at the time. That other guy that was there deceived me with all that stuff. The only work I did there was cleaning work. I was paid $6.00 a week. I did not know what I was saying when I said they only paid me what I would make out of it. My answer that I was making $30.00 a week as a prostitute there, is not correct. I did not know what I was saying when they asked me that the house got $1.00 out of the $3.00, and I got the other $2.00. That answer was not correct. I do not remember making the answer that I gave Gus Phillips $1.00. It was not the truth that I saw Pat Murphey was there. I mean the answers were not true. I am telling the truth today. No one told me to come up here and refute the statement that I made in October. I was married four years ago, and have been living with my husband ever since in Fond du Lac.

LAWRENCE GIESKING:

Mrs. Fagas was not ill at the time she made the statements, except that she was pregnant. She did not complain about being ill. When we left she went with us to the door and stood talking with us on the porch. Her speech at all times was rational. It is true that Kanelos Paskos went to her ahead of us.

LAWRENCE MCCLURG:

The last time I was in the Willow Inn was five or six years ago. At that time the place was being run by Gus. I do not know his last name. The alien there is the man. There were a couple of girls there at that time. I do not know if May Phillips was there. I suppose they took guys upstairs. At the time I had a conversation with one of the girls who did solicit me for prostitution. She said the price would be $3.00. I have heard that the place had girls there for prostitution. Only once during the times I was there did any of the girls talk about prostitution. I know of nobody else who was asked by any of the girls there to go to bed for money. I know it was five or six years ago. I do not remember who I heard it from that they had girls there. They are supposed to have girls there.

OTTO BECKER:

I have been in the Willow Inn a couple of times just to have a drink. A man by the name of Gus runs the place. I am not acquainted with him. He was in the place there a few minutes and went away. As far as I can make out, the place is a tavern. They did not have any girls there the time I was there. There was only one lady in back of the bar and she served drinks. I only stayed a few minutes. I heard that they had girls there for prostitution, but I do not know what the girls were doing. The only

girls I saw was the lady behind the bar. I heard some fellow ask the lady behind the bar where is Blondie, and she said upstairs. I did not know who Blondie was. They never had any girls there when I was there.

ANNA KUMBA:

I have been Cashier of Wisconsin Power and Light since September, 1932. I have charge of and am responsible for applications for service of the company. I received an application from Willow Inn. Service is in the name of May Phillips since October 14, 1935. Before that time, in the name of May Knieley. I know that she is one and the same person as Mrs. Phillips.

JOHN SARTINO:

Pat Murphey came to my restaurant and asked me to take her to Beloit. She did not tell me what she was going to do in Beloit. I left her there with Gus Phillips. About six months afterwards, I received a letter from her saying that she was working at the Willow Inn. After many months I went up there and she was working in the Willow Inn. Gus Phillips was behind the bar. I was there about a half an hour. I made two or three trips and saw Pat Murphey there each time. Pat Murphey never told me she was practicing prostitution at the Willow Inn. I saw other girls around the place. They were drinking at the bar and playing a slot machine. None of the girls solicited me. Pat told me she was making good money as a waitress. I presume she was working as a prostitute on her past reputation. I never saw any prostitution carried on at the Willow Inn. I never was solicited there, and I do not know if Pat Murphey carried on the practice of prostitution there. That is only my guess.

NICK ANGELOS:

None of the girls at the Willow Inn ever went upstairs with me. Gus never told me if anyone came to my tavern and looking for girls to send them out there.

WALTER BUSCHKOPF:

I have been Sheriff of Dodge County since January 7, 1935. Before that I was traffic officer for four years. While such traffic officer I did visit the Willow Inn. I thought Gus Phillips was the proprietor. I never had any reports about the place being a house of prostitution. I have had many reports about other such places and they have all been closed.

MAY PHILLIPS:

I have never posed at the Willow Inn as man and wife. Gus and I have never lived there as man and wife. I have never been arrested. I know the property known as Willow Inn. It is listed under the name May Phillips and I have the license to that place. The license shows single.

HENRY KRUEGER:

I am a member of the State Legislature and Chairman of the Town of Beaver Dam. May Phillips made the application for the license. Before the license was issued to her we did investigate her character. As far as I know, Gus Phillips had no interest in that tavern. All he did there was to clean up and manage the house, I suppose. I have been there at least 15 times in the last five years. I saw one other girl there besides Mrs. Phillips, once or twice when I was there. No girls ever solicited me there. I never heard of girls soliciting men there. I never heard that the place was being operated as a house of prostitution.

HAROLD STOFFLER:

I have been at the Willow Inn and saw girls there. Some of the girls there did ask me to go upstairs to bed with them. The price was not discussed. I took it for granted they wanted me to go to bed with them. They also solicited my friend with me. We both were of the opinion it was for prostitution. Only through hearsay did I hear that the place was a place of prostitution. I cannot prove that, although I believe it to be true. Nothing was said to me at this tavern by the girls about any money. Gus Phillips was not there at the time I said the girls solicited me.

BYRON GOODALL:

I am Immigration Inspector at Chicago, Illinois. I investigated several places around Beaver Dam in 1936, including the Willow Inn. I was stopped at some of these places and solicited, but I never was personally solicited at the Willow Inn. Gus Phillips was not there when I was at the Willow Inn. On the 17th day of August, I met May Phillips there and asked her if she had any girls, and she said she had two girls, one of them housekeeper and the other bar maid. I have been told that the Willow Inn was a place operated as a house of prostitution. I inquired of several persons in and around Beaver Dam and they all told me that the Willow Inn was a house of prostitution.

THE CONTESTED ISSUES.

1.

It is contended by the Petitioner that the Court erred in ordering that the Writ be made absolute and remanded the Petitioner to the custody of the District Director of Immigration and Naturalization.

2.

That the Court erred in not releasing the Petitioner on said Writ of Habeas Corpus.

3.

That the Court erred in finding that the said order of deportation is supported by legal and competent evidence.

4.

That the Court erred in not holding that the warrant of deportation was void and of no effect.

5.

That the Court erred in not holding that the Petitioner had been deprived of his liberty without due process of law and in violation of the Fifth Amendment of the Constitution of the United States of America.

PRAYER FOR RELIEF.

Wherefore, your Petitioner prays the allowance of a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit to the end that this cause may be reviewed and decided by this Court and the judgment and order entered herein be reversed and for such relief as this court may seem meet.

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HARRY G. JOHNSON,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

There must be evidence to support the finding of the Secretary of Labor. A finding without evidence is beyond the power of the Secretary and if the order is not supported by the Evidence the order is void.

Morgan v. *U. S.*, 298 U. S. p. 478.

U. S. v. *Abilene & S. Railway Co.*, 265 U. S., p. 274.

Baltimore & Ohio Railroad v. *U. S.*, 264 U. S. p. 268.

Interstate Commerce Commission v. *Louisville & National Railway*, 227 U. S. p. 88.

In re Japanese Immigrant case, 189 U. S. p. 86.

Affidavits taken preliminary to the hearing cannot be used in evidence against the alien.

Hanges v. *Whitfield*, 209 Fed. p. 675.

Department of Finance v. *Goldberg*, 370 Ill. 587.

4.

That no valid order of deportation was ever made by any person having authority to issue such an order.

Department of Finance v. *Goldberg*, 370 Ill. 578.

5.

The Court erred in sustaining the respondent's Motion to dismiss the Petition.

6.

The Court erred in not denying respondent's Motion to dismiss the Petition.

Statement of Jurisdiction.

It is the contention of the Petitioner that the finding of the Secretary of Labor is not final as held by the United States Court of Appeals, but that the same may be reviewed by the Court, and (1) if the evidence discloses that the said finding is manifestly unfair, (2) that the action of the executive officers was such as to prevent a fair investigation, (3) that there was a manifest abuse of the discretion committed to them, (4) if there is no evidence adequate to support pertinent and necessary findings of fact, (5) if facts and circumstances were considered which should not legally influence the conclusion, (6) if the finding does not embrace basic facts which are needed to sustain the order, (7) if the Secretary did not weigh the evidence, (8) if the conclusions were influenced by extraneous considerations, then the hearing as provided by the Statute was not given the alien and is beyond the power of the Commission and void. Such finding is arbitrary and condemned by the Constitution. (9) The question of who is authorized to sign the Order of Deportation has never been passed upon by this Court.

In support of this contention, we call the Court's attention to Section 155, Title 8 of the United States Code, which provides,

> "In every case where any person is ordered deported from the United States under the provisions of the sub-chapter, or any law or treaty, the decision of the Secretary of Labor shall be final."

This, therefore, only leaves the question for this Court's decision, is there any competent evidence in the record that the alien was employed by, in, or in connection with a house of prostitution? There is no dispute in the record that the alien was employed by, in and in connec-

tion by, with the Willow Inn at Beaver Dam, Wisconsin, so that the finding of the Commissioner can only be sustained if there is competent evidence in the record that the Willow Inn was a house of prostitution.

In the case of *Law Wah Suey* v. *Backus*, 225 U. S. page 460, it is said:

> "A series of decisions in this Court has settled that such hearing before the executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation or that there was manifest abuse of the discretion committed to them by the statute. In other cases, the order by the executive officers within the authority of the statute is final."

and in the case of *Morgan* v. *U. S.*, 298 U. S. pages 478 and 481, it is said:

> "But in determining whether in conducting an administrative proceeding of this sort, the Secretary has complied with the Statutory prerequisites, the recitals of his procedure cannot be regarded as conclusive otherwise the statutory conditions could be set at naught by mere assertion."
>
> "The administrative officer has a duty which carries with it fundamental procedure requirements. There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Nothing can be treated as evidence which is not introduced as such. Facts and circumstances which ought to be considered must not be excluded. Facts and circumstances must not be considered which should not legally influence the conclusion. Findings based on the evidence must embrace the basic facts which are needed to sustain the order. A proceeding of this sort requiring the taking and

weighing of evidence, determination of fact based upon the consideration of the evidence and the making of the order supported by such evidence as a quality resembling that of a judicial proceeding. Hence, it is frequently described as a proceeding of a quasi-judicial character. The requirement of a full hearing has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The hearing is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusions uninfluenced by extraneous considerations which in other fields might have play in determining fairly executive action. The hearing is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given."

Again in the case of *U. S.* v. *Abilene & S. Railway Co.*, 265 U. S. page 274, it is said:

"A finding without evidence is beyond the power of the commission. Papers in the commissioner's files are not evidence in a case."

and in the case of *Baltimore & Ohio R. R. Co.* v. *U. S.*, 264 U. S. page 268:

"An order which, by statute, can be made only after hearing, is void if unsupported by the evidence."

and we also find in the *Interstate Commerce Commission* v. *Louisville & National R. R. case*, 227 U. S. page 88:

"A finding without evidence is arbitrary and useless, and an act of Congress granting authority to anybody to make a finding without evidence would be inconsistent with justice and an exercise of arbitrary power condemned by the Constitution. Administrative orders quasi-judicial in character are void if a hearing is denied, if the hearing granted is manifestly unfair, if the finding is indisputably contrary to the

evidence, or if the facts found do not, as matter of law, support the order made. The legal effect of evidence is a question of law, and a finding without evidence is beyond the jurisdiction of the Commissioner. There the party affected is entitled to a hearing, the Commission, cannot base an order on the information which it has gathered for general purposes. The order must be based on evidence produced."

In the case involving the deportation of an alien, that is the case known as the *Japanese Immigrant case*, 189 U. S. page 86, it is said:

> "It is not competent for the Secretary of the Treasury or any executive officer arbitrarily to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the U. S. No such arbitrary power can exist where the principles involved in due process of law are recognized.
>
> The words here used do not require an interpretation that would invest executive or administrative officers with absolute arbitrary power."

Also, the deportation case brought up before the Court upon Habeas Corpus, *i. e.*, *Hanges* v. *Whitfield*, 209 Fed. page 675:

> "In Habeas Corpus proceedings brought by an alien for deportation, the Court cannot consider the sufficiency of the evidence if properly and fairly taken, but may, and it is its duty to, consider the means of procuring the testimony and its competency and legal admissibility against petitioner, and determine whether or not he has had a fair and impartial hearing.
>
> *Ex parte* affidavits may be taken preliminary to and as a basis for an application for a warrant for the arrest of an alien, so charged, but such affidavits cannot be again used in evidence against him on his hear-

ing after arrest, at which he is entitled to be represented by counsel and to cross-examine the witness against him. Where counsel was denied the right to have the person making the affidavits called for examination and were unable to procure their testimony, it is held that the charge against them was not supported by any competent testimony, nor were they given a fair hearing and that they were entitled to be discharged."

From these decisions, we contend that the Court should examine the evidence to ascertain whether or not there is any competent evidence in the record upon which to sustain the finding of the Department of Immigration, and if there is no such competent evidence, this Court should grant the petition of Habeas Corpus and release the alien from custody of the Immigrant Officer.

In order to save the Court time of reading the entire record herein, we have, we believe, fairly and honestly abstracted all of the testimony and submit said abstract of testimony herewith for your Honor's consideration.

We believe the Court should note the character of the witnesses that appeared on behalf of the alien, *i. e.*, the District Attorney of the County where the alien resides, the Sheriff of said County, the Chief of Police both of Beaver Dam and of Fond du Lac, Wisconsin, the State Representative of said District, the Banker of Beaver Dam, and practically all of the business people in and around Beaver Dam, all of whom speak of the alien as being a man of the highest reputation, and the Court will also notice that most of these men have frequented the Willow Inn with their families. We do not believe that this Court will hold that these citizens are so depraved as to take their families to a house of prostitution for entertainment.

It will also be noticed that the only evidence which even

slightly tends to indicate that the Willow Inn was a house of prostitution, were two witnesses who stated that they heard girls solicit men in said Willow Inn, but they state that they were not solicited and that they merely inferred, or guessed, or suspected that the girls were there for the purpose of prostitution. We do not believe that this Court will condemn the alien on any witnesses' guess or suspicion without any positive proof.

We will not even comment on the testimony of the man who instigated these proceedings against the alien, *i. e.*, Kanelos Paskos, as the record will show that his reputation for truthfulness and veracity was impeached by each and every one of the witnesses for the alien, and the evidence shows that he has been convicted on about every charge from driving a car without a license to murder; and after all, the only testimony found in the record as given by the said Paskos before the Commissioner was that he, Paskos, was arrested in Rockford for carrying a gun, was arrested in Beaver Dam for selling beer without a license, was arrested and fined $25.00 for driving a car without a license; that he went to the court house to find out whether or not Gus Phillips was the owner of the building, and that he inquired of the Registrar of Deeds as to whether Gus Phillips was a citizen.

On the testimony as to the character of the Willow Inn tavern or of the alien, it is true that there is attached to the record several statements by the Inspectors and others of the reports which had been made to them about the character of the Willow Inn, but we submit to your Honors, that under the decision cited above, those reports, without opportunity of the alien to examine the parties upon whom the Inspector relied for information, cannot be considered by this Court in deciding whether or not there was competent evidence before the Inspector upon which to base his order for deportation.

The Circuit Court of Appeals therefor, in its opinion filed herein, has misapprehended and misconstrued the argument of Petitioner.

The Circuit Court of Appeals in its opinion filed therein, has misapprehended and misconstrued the decisions of the United States Supreme Court.

It is not our intention to reargue the facts and law in this court, but will only endeavor to call the court's attention to the facts and the law which we believe the United States Circuit Court of Appeals has either misapprehended or overlooked.

The recent case of *Curier Post Publishing Company* v. *Federal Commission*, decided in the United States Circuit Court of Appeals for the District of Columbia on March 6, 1939 (Volume Citation not available to writer), involved the granting of a permit to Construct a Radio Station. Section 402(e) of the Communications Act of 1934, 47 U. S. C. A., 402(e) provides in part:

> "That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious."

The Court there said:

> "The Supreme Court has declared substantial evidence to be 'more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established.' It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Consolidated Edison Co.* v. *National Labor Relations Board*, 59 S. Ct., 206—83 L. Ed. decided December 5, 1938.)

They held in that case:

> "The commission's finding cannot be regarded as other than arbitrary and capricious. While the commission is not bound by the findings of the examiner, it is itself charged with the responsibility of making findings."

The Supreme Court in the case of *Law Mah Suey* v. *Backus*, 225 U. S., P. 460, says:

> "In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the proceedings were manifestly unfair * * * that there was a manifest abuse of the discretion committed to them by the statute."

and in the case of *Morgan* v. *U. S.*, Page 478, the Supreme Court says:

> "There must be evidence adequate to support pertinent and necessary findings of fact * * * findings based on evidence must embrace the basic facts which are needed to sustain the order. A proceeding of this sort requiring the taking and weighing of evidence, determination of fact based upon the consideration of the evidence and the making of the order supported by such evidence as a quality resembling that of a judicial proceeding."

Again in the case of *U. S.* v. *Abilene and S. Railway Co.*, 265 U. S., Page 274:

> "A finding without evidence is beyond the power of the commission."

and in *Baltimore and Ohio Railroad* v. *U. S.*, Page 268:

> "An order which by statute can be made only after a hearing is void if unsupported by evidence."

It will be noticed that these quotations are taken from the opinions of the United States Supreme Court and not

from the opinions of the several United States Courts of Appeals found in the Federal Reporter. We do not rely solely upon the opinion of *Hanges* v. *Whitfield*, 209 Federal, Page 675, as stated by the Circuit Court of Appeals in its opinion in the instant case.

The question, therefore, is, was there a manifest abuse of discretion by the Secretary of Labor? Did he weigh the evidence? Is the finding supported by the evidence? Is there any evidence adequate to support pertinent and necessary findings of fact?

The decision of the Circuit Court of Appeals is based upon the statement in the opinion that the testimony of Appellant's witnesses

> "was negative in character and did not preclude the Secretary of Labor from determining the issue presented adversely by Appellant upon the direct and positive evidence before him."

The gist of this action is that the Willow Inn, where the Appellant is employed, is a house of prostitution.

We will not here repeat the testimony of the numerous witnesses as to the character and reputation of the Petitioner. No one will contend that the Petitioner cannot look upon this record with pride as to what his neighbors have to say about him.

Is there any competent evidence in this record from which any court passing judicially upon the question can hold that his place of employment was a house of prostitution?

Byron Goodall testified:

> "I am an Immigration Inspector at Chicago. I investigated several places around Beaver Dam in 1936, including the Willow Inn. I was stopped at some of

these places and solicited, but I was never personally solicited at the Willow Inn. I have been told that the Willow Inn was a place operated as a house of prostitution. I inquired of several persons in and around Beaver Dam and they all told me that the Willow Inn was a house of prostitution."

We ask, is it not manifestly unfair, is it not manifestly an abuse of discretion for any court or quasi judicial body to find such testimony supports the finding that the Willow Inn is a house of prostitution? Does this evidence satisfy the rule laid down in the cases above referred to?

HAROLD STOFFLER, a witness on behalf of the Government, testified:

"I have been at the Willow Inn and saw girls there. I took it for granted they wanted me to go to bed with them. Only through hearsay did I hear that the place was a house of prostitution. I cannot prove that, although I believe it to be true."

HENRY KRUEGER and OTTO BECKER testified:

"I saw one other girl there besides Mrs. Phillips. There was only one lady in back of the bar and she served drinks."

WALTER BUSCHKOPF, Sheriff of Dodge County, says:

"I never had any reports about the place being a house of prostitution. I have had many reports about other places, and they have all been closed."

JOHN SARTINO testified:

"I never was solicited there."

OTTO BECKER says:

"They never had any girls there when I was there."

CLARA FAGAS says:

"I told them I was a decent girl; that at the time I was working there, there was no other girls there."

GEORGE GROLING, Chief of Police:

"I never heard that the place had any girls there. I never heard any reports about the place."

E. E. SCHUMACHER, District Attorney:

"I never had any complaints against the Willow Inn. I never heard by reputation or otherwise that the Willow Inn was run as a house of prostitution."

STEVE CONES:

"I am a married man and have nine children. When ever I went there no women ever solicited me. I never saw any women hanging around there."

DANIEL M. FREITAG:

"The only women I saw there were always escorted."

TOM ELLAN:

"I never heard anything about the Willow Inn. No one solicited me. It is run as an ordinary tavern."

ARTHUR CISCO:

"No women ever solicited me there."

HARRY BEN HENDLER:

"I have never been solicited by anyone there. It has always been operated as a good clean tavern."

EMMERSON WALDHEIR:

"I have never heard that the place was being conducted as a house of ill fame."

HENRY KRUEGER, Assemblyman and Town Chairman, whose duty it was to issue tavern licenses:

> "I have never had any complaints of any nature against that tavern."

We have quoted extensively from the evidence, not as a reargument thereof, but merely to point out to the court wherein the Circuit Court of Appeals misapprehended the evidence in stating in its opinion that:

> "This testimony, however, was negative in character."

and that the Secretary of Labor determined:

> "the issue presented adversely to Appellant upon direct and positive evidence before him."

These statements of the witnesses are not negative in character but are positive assertions of fact and stand unimpeached in the record. We ask the District Attorney to quote a scintilla of evidence in the record of any man ever having had intercourse with a woman at the Willow Inn. The finding of the Department of Labor and the decision of the United States Circuit Court of Appeals is based entirely upon what someone told someone else and not upon the testimony heard before the Inspector. Again we ask, was there

> "a manifest abuse of discretion committed?"

Did the Department hear the evidence? Was the "order supported by such evidence as a quality resembling that of a judicial proceeding?"

It is true that the witness McClurg said:

> "These girls took guys up to the room."

but immediately qualified his statement by "I suppose." He also stated that some girl there solicited him for prostitution, but may we ask can any man visit almost any tavern or hotel lobby and not be solicited by some woman?

The fact that some woman solicits a man in a tavern proves nothing as to the fact that that tavern is a place run as house of prostitution.

Henry Stoffler also testified that he had a conversation with girls there and that they asked him to go to bed with them; that at one time two girls asked him and his friend if they would buy them a drink, and one of the girls asked him if he would go upstairs with them. But, he does not in any way connect the girls present there with the management of the Willow Inn.

We have always understood that testimony must be considered in the light of innocence—not guilt. From aught that appears from his testimony, these girls may have been strangers or guests visiting there and the management have no knowledge of their nefarious trade. We all know that such things happen every day in the most fashionable hotels in our city. It is beyond our comprehension that the government inspectors in those short and few visits to Beaver Dam, could collect sufficient evidence to brand the Willow Inn as a house of prostitution, whereas every official in Dodge County and Beaver Dam, after repeated investigations, never heard one word indicating such to be the fact.

In reference to the affidavits offered in evidence, we have only this to say, the United States Circuit Court of Appeals in its opinion says:

> "The record does not disclose whether the persons who made these affidavits were all personally present, but we assume they were."

We do not believe that the court should assume anything, but should pass judgment upon the Petitioner upon the facts as disclosed by the record.

As a matter of fact, the record discloses that the persons that made the affidavits were not all present. The

affidavit of Mary Martin was introduced in evidence, and which affidavit is one most relied upon, by the respondent, but the evidence discloses in the testimony of Lawrence Giesking, Government Inspector that the Martin woman was deported to Mexico long before the hearing and that it was impossible to have her present to testify.

The Appellate Court in the instant case held that inasmuch as the privilege of cross examining the witness at the hearing was waived by his counsel, the affidavits theretofore taken were properly received in evidence.

We believe that the Supreme Court of Illinois in the case of *Union Mutual Life Insurance Company* v. *Slee*, 123 Illinois, Page 57, on Page 95, correctly state the rule as follows:

> "The party is entitled to be present and listen to the testimony of the witness as it is detailed to him in chief, and to then, or as soon thereafter as convenience will admit, cross-examine him; and it does not cure the error or denying this opportunity, to allow him, at some subsequent day, to have the witness brought before the master in chancery for his cross-examination. It is important that a party shall be allowed an opportunity to confront witnesses who may testify against him while giving their hostile evidence."

The reasonableness of this rule and the unreasonableness of the rule as stated by the Appellate Court in the instant case, is clearly demonstrated by the evidence of the witness, Clara Fagas, in the instant case. In the affidavit presented before the hearing she gave very damaging testimony against the Petitioner but when she appeared at the hearing to testify, she repudiated all that testimony and gave very favorable testimony on behalf of your Petitioner.

In conclusion, we again wish to call the court's attention to the case known as the *Japanese Immigrant* case, 189

U. S., Page 86, cited in our original brief, where the Supreme Court says that it is not competent for the Secretary of the Treasury or any executive officer arbitrarily to cause an alien to be deported,

> "no such arbitrary power can exist where the principals involved in due process of law are recognized."

The alien here testified that he legally entered the United States in September, 1907; that he never committed a crime or misdemeanor and that he has never been an inmate of a house of prostitution or managed such or assisted in the management of such, nor employed in or connected with such a place, that he never managed a dance or music hall or any place frequented by prostitutes or derived any benefits therefrom, or shared in the earnings of prostitutes; that he came to this country when he was a kid and that although he has been here for thirty years, he has not violated any laws and has tried to become an American citizen. In fact, we believe, if we may be frank with the court, that the United States Circuit Court of Appeals rendered this adverse opinion against the alien, because the court felt it should not give much consideration to an alien who has been here for thirty years and has not become a citizen. But the record discloses, although not abstracted, that many years ago the alien did apply for his citizen papers, but because of leaving the State where such application was made, he did not go on with his application. It is further a fact, which we are sure the District Attorney will not dispute, that these very proceedings were instigated by the fact that the alien again made application for citizenship and the investigations made by the Department were made not toward his deportation, but to ascertain whether or not he was elligible to citizenship.

ARGUMENT.

The petition was denied upon a motion of the District Attorney to dismiss the said petition for Writ of Habeas Corpus. In said motion, it is stated:

> "The Secretary of Labor, having considered the evidence directed the petitioner's deportation to Greece on the charge that the petitioner is subject to deportation under Section 19 of the Immigration Act of February 5, 1917."

That statement, we will endeavor to show is not a true statement of the facts. Said motion also alleges that the petitioner appealed a former decision of this court to the United States Supreme Court and that certiorari was denied, giving the trial court the impression that the Supreme Court had considered the merits of this cause. However, the order of the Supreme Court was that the said petition for certiorari be denied "for the reason that application therefore was not made within the time provided by law." It is also stated in said motion to dismiss the petitions that:

> "The Court is further informed that the petition for Habeas Corpus, now before this Court, is identical with the original petition which was dismissed by this Court, and which order of dismissal was affirmed by the Circuit Court of Appeals and certiorari was denied by the United States Supreme Court. No new issues of any kind or rights have the new petition."

None of the above quotations are borne out by the record and had the Court required the Respondent to answer said petition, said statements could have been refuted by the petitioner. The record discloses that the Secretary of Labor did not direct the petitioner's deportation. Said

order of deportation was signed by Turner W. Battle, Assistant to the Secretary of Labor and not by the Secretary of Labor as by the statute provided.

> "In every case where any person is ordered deported by the United States under the provisions of this act or of any law or treaty, a decision of the Secretary of Labor shall be final."

The present petition for Habeas Corpus alleged among other provisions

> "that the said Andrew Jordan, District Director of Immigration at Chicago, Illinois, or any other officers having custody of your petitioner has no warranty whatsoever, for the commitment or detention of your petitioner."

That allegation was not contained in the original petition of Habeas Corpus filed herein and was not passed upon by the Appellate Court in the former appeal. The present petition for Habeas Corpus therefore, was not identical with the original petition which was before this Court. It is our contention that the trial court should not have taken the allegations contained in the motion to dismiss the petition for Habeas Corpus as true but should have required said allegations to be contained in an answer or reply to the petition. We contend that the Assistant Secretary of Labor had no authority to sign the order of deportation; that the right to sign such an order is a quasi judicial function which cannot be delegated but can be exercised solely by the one authorized so to do so by the statute. It is our contention that the duties of the Assistant Secretary of Labor are such as the duties of a master in chancery, a referee in bankruptcy or a commissioner appointed by the Court to assist the Court in making a correct finding, but the finding must be made by the Judge—in this instance, the Secretary of Labor, herself. We therefore contend that the order signed by the Assistant

Secretary of Labor is null and void and that the alien has never been legally ordered deported. This difficulty evidently was called to the attention of Congress, as the said provision providing that the order shall be signed by the Secretary of Labor was later amended, authorizing her Assistant Secretary to sign the order of deportation.

We therefore contend that the order signed by the Assistant Secretary of Labor is null and void, and that the alien has never been legally ordered deported.

We have not found any decision by this Court on this question, and Counsel for respondent and the Court of Appeals have cited none rendered of this Court. As Congress has during the past few years, created numerous Bureaus, Commissions and Departments, having quasi judicial powers, we believe it is of great importance that this Court express its opinion as to whether or not the chief officer of such departments may delegate his authority to some assistant.

Harry G. Johnson,
Attorney for Petitioner.

APPENDIX.

1.

The summary of the Immigration Inspector was as follows:

"SUMMARY: From the foregoing hearings, it is found that Costantinos or Constantinos Karpathiou alias Gus Phillips, named in Department warrant of arrest No. 55933/730, dated October 27, 1936, is an alien, a native and citizen of Greece; that he last entered the United States at New York, N. Y., on the Steamer 'La Bretagne' on September 23, 1907; that the evidence contained therein sustains the charge in the warrant of arrest, 'that he has been found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather'; also the additional charges formally placed against the alien, 'that he has been found in the United States in violation of the immigration act of 1917, in that he has been connected with the management of a house of prostitution or place where prostitutes gather,' and that he is in the United States in violation of the immigration act of 1917 in that he has been employed in a house of prostitution or a place where prostitutes gather.' The evidence does not sustain the additional charge, 'that he has been found an inmate of a house of prostitution.'

"Recommendation: Deportation to Greece is recommended."

2.

The finding of the Assistant to the Secretary of Labor was as follows:

"The alien is subject to deportation under Section 19 of the Immigration Act of February 5, 1917, being

subject thereto under the following provisions of the Laws of the United States, to-wit: The Immigration Act of 1917, in that he is employed by, in, or in connection with a house of prostitution; and that he is an inmate of a house of prostitution."

3.

Section 155, Title 8, United States Code provides,

"In every case where any person is ordered deported from the United States under the provisions of the sub-chapter or any law or treaty, the decision of the Secretary of Labor shall be final."

4.

The Opinion of the United States Circuit Court of Appeals,

"Before EVANS, MAJOR and KERNER, Circuit Judges.

Major, Circuit Judge. This is an appeal from a judgment dismissing a petition for writ of habeas corpus filed on behalf of appellant, Constantinos Karpathiou, an alien. By the proceeding it was sought to test the validity of a warrant issued by the Secretary of Labor for the deportation of appellant upon the ground that he is in the United States contrary to the Act of February 5, 1917, Section 155, Title 8, U. S. C. A., in that appellant has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort habitually frequented by prostitutes or where prostitutes gather.'

Appellant entered this country September 23, 1907, and admittedly is an alien. A hearing was had before a United States Immigration Inspector, at which time the additional charge 'in that he has been found an inmate of a house of prostitution' was made. Prior to the hearing before the Immigration Inspector, affidavits had been obtained from four persons, some of whom had been inmates or employees of the house in question, known as the Willow Inn. At the hearing a

large number of witnesses testified, and during the hearing these affidavits, previously obtained, were offered in evidence. The record does not disclose whether the persons who made these affidavits were all personally present or not, but we assume they were. At any rate, counsel for appellant was asked if he desired to cross-examine such persons. He availed himself of the privilege of cross-examining one of such persons but waived such privilege as to the other three. The one examined repudiated the material statements contained in her affidavit. It is not disputed by appellant but what the evidence contained in the affidavits was sufficient to support at least some of the charges preferred. It is argued, however, that these affidavits were improperly received in evidence and should not have been considered by the Department of Labor, and cannot be here considered in support of the charge.

The impotency of this argument lies in the fact that the courts have recognized it generally as being proper. In connection with such holdings it has been held that the alien is entitled to the privilege of an oral examination of the persons who have made the affidavits. Appellant cites and relies upon the authority of *Hanges* v. *Whitfield*, 209 Fed. 675, but an examination of that case discloses that it is not at variance with the general rule. The effect of that holding was that the affidavits were improperly received in evidence for the reason that the alien was denied the right to examine the witnesses at the hearing. Inasmuch as this privilege was offered appellant in the instant case, and waived by his counsel, we think there can be no question but what the affidavits were properly received in evidence.

In addition to the affidavits, however, there was testimony at the hearing which tended very strongly to support the charge. One witness in particular, an immigration inspector, gave strong and convincing testimony in support of the charge. It would serve no good purpose to relate the details of his testimony—it is sufficient to state it was positive and direct and

in connection with other circumstances testified to at the hearing, was sufficient to justify the conclusion reached and this, irrespective of the affidavits complained of.

It is true, as argued by appellant, that a large number of witnesses, including business men, local officials and acquaintances of appellant, many of whom at rather infrequent intervals had visited the house in question, gave testimony to the effect that they had not observed anything about the place of an immoral or improper nature. This testimony, however, was negative in character and did not preclude the Secretary of Labor from determining the issue presented adversely to appellant upon the direct and positive evidence before him.

Appellant also urges that the Secretary of Labor erroneously found that the appellant 'is an inmate of a house of prostitution' and argues that the words 'an inmate' cannot apply to a male person. Even if this argument be sound, it would avail appellant nothing, as it was merely one of the charges on which deportation was ordered. We do not agree, however, with appellant's contention in this respect. The question was before the court in *Ex parte Psimoules*, 222 Fed. 118, and we agree with the construction there given the words in question, as well as the reason assigned by the court for its conclusion (See also *United States* v. *Brough*, 15 F. (2d) 377).

As recognized by the appellant in his brief, the District Court was not the trier of the facts relevant to the issues presented. The statute itself, as well as numerous authorities, plainly makes the decision of the Secretary of Labor in deportation proceedings final. The court is without authority to weight the evidence or to substitute its judgment as to the merits of the controversy, and this court is bound by the same limitations.

The order of the District Court is AFFIRMED."

OPINION.

February 18, 1946.

Before SPARKS and KERNER, *Circuit Judges*, and BALTZELL, *District Judge*.

BALTZELL, *District Judge*. The petitioner-appellant, hereinafter referred to as the petitioner, filed a petition for a writ of habeas corpus in the district court on May 25, 1945, which petition was on June 1 dismissed on motion of respondent-appellee, hereinafter referred to as respondent. This appeal challenges the correctness of the order of the district court in dismissing the petition.

This is the second time petitioner has filed in the same district court a petition for a writ of habeas corpus, and the second time it has been before this court on appeal. The district court in the first case, after a full and complete hearing upon the merits, denied the petition. The case was appealed to this court and affirmed on October 20, 1939. *The United States of America ex rel. Constantinos Karpathiou* v. *Fred J. Schlotfeldt, District Director of Immigration and Naturalization, Chicago District*, 106 F. (2d) 928, certiorari denied 309 U. S. 681. The facts are fully discussed in the former opinion of this court, and no good purpose would be served by again reviewing them. Reference is therefore made to our former opinion (106 F. (2d) 928) for a discussion of the facts.

An examination of the record in the first case convinces us that that case was properly decided in both the district court and in this court on appeal. The same issues were

presented in the first case as in the instant case, and that decision will stand unless there is some merit in the contention of petitioner presented in his brief as to the validity of the warrant of deportation. It seems that is the only question presented which petitioner contends was not presented and decided in the first case. In that case, however, this court said, "By the proceeding it was sought to test the *validity of a warrant issued by the Secretary of Labor* for the deportation of appellant upon the ground that he is in the United States contrary to the Act of February 5, 1917, Section 155, Title 8, U. S. C. A., in that appellant 'has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort habitually frequently by prostitutes or where prostitutes gather'." (Our italics.) Since that issue was decided contrary to the contention of petitioner in the first case, it would seem that this court should not be called upon again to decide the same question. However, it seems that petitioner now contends "that no valid order of deportation was ever made by any person having authority to issue such an order." This court will therefore examine that question in view of this contention.

In his brief, the petitioner says, "The record discloses that the Secretary of Labor did not direct the petitioner's deportation. Said order of deportation was signed by Turner W. Battle, Assistant to the Secretary of Labor and not by the Secretary of Labor as by the statute provided." The statute to which reference is made, at the time the warrant of deportation was issued, read in part as follows: "In every case where any person is ordered deported from the United States under the provisions of this subchapter or of any law or treaty, the decision of the Secretary of Labor shall be final." *Title 8 U. S. C. A. 155.* Petitioner further says in his brief, "We contend that the Assistant

Secretary of Labor had no authority to sign the order of deportation; that the right to sign such order is a *quasi* judicial function which cannot be delegated but can be exercised solely by the one authorized so to do by the statute * * *." No authority is cited to sustain this contention. The position of the office of Assistant to the Secretary of Labor is created by statute. Such statute reads as follows: "There shall be in the Department of Labor not more than two assistants to the Secretary who shall be appointed by the President and shall perform such duties as may be prescribed by the Secretary of Labor or required by law." *Title 5 U. S. C. A. 613(a).* This court said in the case of *Werrmann* v. *Perkins*, 79 F. (2d) 467 (C. C. A. 7), that "The point is also made that the warrant of deportation is executed by an assistant to the Secretary of Labor, whereas the statute provides that deportations shall be on the warrant of the Secretary of Labor * * *." The court then quotes Sec. 613(a) of Title 5 above, and other provisions of the statute pertaining to " 'aliens who are by law otherwise excluded from admission into the United States * * *' " and then continues, "It has been held that under these provisions the assistant to the Secretary of Labor may properly act in deportation proceedings and execute deportation warrants and that the courts will take judicial notice that certain persons were, at the time, assistants to the Secretary of Labor. *Hajdamacha* v. *Karnuth* (D. C.), 23 Fed. 2nd 956; *United States* v. *Karnuth* (D. C.), 35 Fed. 2nd 601; *United States* v. *Phelps*, (C. C. A.), 40 F. (2d) 500. We conclude that this assignment is without substantial merit." Other cases to the same effect are: *Restivo* v. *Clark*, (C. C. A. 1), 90 F. (2d) 847; *In re Giacobbi* (D. C. N. Y.) 32 F. Supp. 508, affirmed without opinion, 111 F. (2d) 297 (C. C. A. 2, 1940). There is no merit in petitioner's contention in this case

that the warrant of deportation is invalid. Such warrant is valid and enforceable.

The district court properly exercised its sound discretion in giving controlling weight to the prior decision and in dismissing the petition. *Wong Doo* v. *United States,* 265 U. S. 239, 44 S. Ct. 524, 68 L. Ed. 999; *Salinger* v. *Loisel,* 265 U. S. 224, 44 S. Ct. 519, 68 L. Ed. 989; *Pope* v. *Huff* (App. D. C., 1944), 141 F. (2d) 727; *Swihart* v. *Johnston* (C. C. A. 9, 1945), 150 F. (2d) 721; *Dorsey* v. *Gill* (App. D. C. 1945), 148 F. (2d) 857, certiorari denied 325 U. S. 890; *United States* v. *Coy* (D. C. Ky., 1944), 57 F. Supp. 661. Litigation must end, and cannot be continued indefinitely in this manner. *Wong Doo* v. *United States, supra.*

The order of the district court is AFFIRMED.

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No. 1201

In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES EX REL. CONSTANTINOS KARPATHIOU, PETITIONER

v.

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, CHICAGO DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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CITATIONS

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OPINION BELOW

The opinion of the circuit court of appeals (R. 41–44)[1] is reported at 153 F. 2d 819.

[1] We have secured from the clerk of the circuit court of appeals and have lodged with the Clerk of this Court the respondent's return and exhibits attached thereto, in the earlier habeas corpus proceeding instituted by petitioner (see p. 4, *infra*.) The exhibits consist of the original records of the Department of Labor concerning the deportation proceeding against petitioner. These records were incorporated as part of the record on appeal in the instant case (R. 19). Pursuant to stipulation they were not printed, but were, however, considered by the circuit court of appeals (see R. 21, 38, 42). References to these records are designated by the original exhibit numbers.

JURISDICTION

The judgment of the circuit court of appeals was entered February 18, 1946 (R. 44). The petition for a writ of certiorari was filed May 3, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Petitioner instituted a habeas corpus proceeding challenging the validity of a warrant directing his deportation. The validity of the warrant was sustained. Several years later he filed a second petition for a writ of habeas corpus challenging the validity of the warrant. The district court, on motion of the respondent, dismissed the petition. The questions presented by the petition for a writ of certiorari are

1. Whether, in view of the prior proceeding, the district court properly dismissed the recent petition;

2. Whether, in any event, (a) there was sufficient evidence to support the warrant of deportation, and (b) whether petitioner was accorded a fair hearing in the deportation proceeding; and

3. Whether the warrant of deportation was void because it was issued by an assistant to the Secretary of Labor.

STATUTE INVOLVED

Section 19 of the Act of February 5, 1917, c. 29, 39 Stat. 889 (8 U. S. C. 155), as it read at the time of the issuance of the warrant of deportation, provided:

> * * * any alien who shall be found an inmate of * * * a house of prostitution * * * after such alien shall have entered the United States, * * *; any alien who * * * is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. * * * In every case where any person is ordered deported from the United States under the provisions of this Act, * * * the decision of the Secretary of Labor shall be final.

STATEMENT

Petitioner is an alien, a native and citizen of Greece, who entered the United States on September 23, 1907 (R. 9, 22). In October 1936, a deportation proceeding was instituted against him (Ex. 1), and after hearings in 1936 and November 1937, at which he was represented by counsel (Ex. 2), an assistant to the Secretary of Labor on January 14, 1938, on the basis of the proof submitted, issued a warrant directing his deporta-

tion to Greece on the ground that he was subject to deportation under Section 19 of the Act of February 5, 1917 (*supra*, p. 3), in that he "is employed by, in, or in connection with a house of prostitution; and that he is an inmate of a house of prostitution" (Ex. 3). On July 16, 1938, petitioner filed a petition for a writ of habeas corpus in the District Court for the Northern District of Illinois, claiming that the warrant of deportation was invalid in that it was not supported by competent evidence and that he had not been accorded a fair hearing by the immigration authorities (R. 7; see also pages 2–4 of the record in No. 740, October Term, 1939, certiorari denied, 309 U. S. 681). The district court dismissed the petition after a hearing, and on appeal to the Circuit Court of Appeals for the Seventh Circuit, the order of dismissal was affirmed (R. 7–11; 106 F. 2d 928). Petitioner's application for a writ of certiorari was denied by this Court for the reason that it was not filed within the time required by law. 309 U. S. 681; No. 740, O. T. 1939.

The present proceeding arose upon a petition for a writ of habeas corpus filed by petitioner in the District Court for the Northern District of Illinois on May 25, 1945. Petitioner renewed his claims that the warrant of deportation was invalid in that it wa snot supported by competent evidence and that he had not been accorded a fair hearing by the immigration authorities (R. 2–4). Re-

spondent filed a motion to dismiss the petition, in which he set forth the proceedings on the earlier petition and alleged that the second petition did not raise any new issues (R. 7–8). After hearing argument of counsel, the district court dismissed the petition (R. 14), and on appeal to the Circuit Court of Appeals for the Seventh Circuit, the order of dismissal was affirmed (R. 41–44).

ARGUMENT

1. As appears from the Statement, p. 4, *supra*, each of petitioner's applications for a writ of habeas corpus assailed the validity of the warrant of deportation on identical grounds, viz., that the warrant was not supported by competent evidence and that he had not been accorded a fair hearing. These issues were determined adversely to petitioner in the first habeas corpus proceeding. (See R. 9–11.) Accordingly, we believe that the court below correctly held, on the basis of the decisions cited by it, that in the second proceeding the "district court properly exercised its sound discretion in giving controlling weight to the prior decision and in dismissing the petition" (R. 43–44). Petitioner's contention (Pet. 40) that the second habeas corpus petition raised an issue which was not involved in the earlier proceeding by virtue of the allegation in the second application that respondent "has no warrant whatsoever for the commitment or detention" of petitioner (R. 4), is hardly tenable. Since a warrant

of deportation was concededly outstanding, it is difficult to understand how this allegation raised any issue in the case. But even if it be assumed that by this allegation petitioner was attacking the validity of the warrant on the ground that it was signed by an assistant to the Secretary of Labor instead of the Secretary of Labor (see Pet. 40), it does not avail him. This fact was known to him in the first habeas corpus proceeding, and he failed to raise the point there. Under these circumstances, he should not be permitted to reserve the point for use in attempting to support a second petition for a writ of habeas corpus. As this Court said in an analogous situation, this would result in making "an abusive use of the writ of habeas corpus." *Wong Doo* v. *United States,* 265 U. S. 239, 241.

2. On the merits, petitioner's principal contention (Pet. 21, 23, 24–38) is that the warrant of deportation is void because it is not supported by competent evidence that the Willow Inn at which he was employed was a house of prostitution. He argues that the only evidence adduced at the deportation hearings to support the charge as to the nature of the inn was inadmissable hearsay, as against which the record contained the testimony of witnesses who appeared in petitioner's behalf and who had visited the inn, that to their knowledge the inn was not a house of prostitution. Assuming that petitioner is now entitled to a second judicial review

of this contention, despite the earlier adverse determination, we submit that it is without merit.

In discussing petitioner's contention on his appeal in the first habeas corpus proceeding, the court below said that the immigration authorities received in evidence at the hearings before them the affidavits of inmates or employees of the inn which petitioner did not deny supported the charges against him;[2] that petitioner was offered the opportunity to examine the affiants at the hearings, but that he waived the opportunity except as to one of them;[3] and that in these circumstances the affidavits were properly received in evidence (R. 9–10). The court also stated in this connection that apart from the affidavits "there was testimony at the hearing which tended very strongly to support the charge. One witness in particular, an immigration inspector, gave strong and convincing testimony in support of the charge. * * * it is sufficient to state it was positive and direct and in connection with other circumstances testified to at the hearing, was sufficient

[2] The affidavits are in the form of exhibits attached to Ex. 2 in the first habeas corpus proceeding, viz., Ex. 2 (pp. 5, 7–8); Ex. 3 (pp. 4–5); Ex. 4 (pp. 3–4); Ex. 5 (pp. 1–3); Ex. 6 (pp. 2–6). They show that during the time of petitioner's employment at the inn, it was used, at least in part, as a house of prostitution.

[3] The record shows that petitioner's counsel cross-examined two of the affiants (Ex. 2, pp. 51, 71–72), that he was accorded the opportunity to cross-examine the others, and that he specifically waived the privilege as to the latter (Ex. 2, p. 56).

to justify the conclusion reached * * *",[4] 'and, referring to the fact that petitioner's witnesses, 'including business men, local officials and acquaintances of [petitioner], many of whom at rather infrequent intervals had visited the house in question, ~~gave testimony to the effect~~ testified that they had not observed anything about the place of an immoral or improper nature,"[5] the court said that such "testimony, however, was negative in character and did not preclude the Secretary of Labor from determining the issue presented adversely to [petitioner] upon the direct and positive evidence before him"

[4] Apparently the opinion at this point had reference to the testimony of Inspector Goodall. He testified that he was at the inn on August 16, 1937, at which time he saw a woman solicit a man, presumably for sexual relations, and saw them go upstairs (Ex. 2, p. 106). This was after the deportation proceeding had been instituted (see p. 3, supra). Goodall also testified that the next morning he saw petitioner asleep in a room at the inn and had seen petitioner at the inn on several occasions in 1937 (Ex. 2, pp. 106–107). Petitioner testified that he had left his employment at the inn in December 1936 (Ex. 2, p. 81). One witness testified that five or six years previously he had been solicited by a girl at the inn, and that "they are supposed to have girls there" (R. 31–32; see Ex. 2, pp. 73–77). Another witness testified that he had heard there were prostitutes at the inn, and that he heard "some fellow ask the lady behind the bar where is Blondie, and she said upstairs" (R. 32; see Ex. 2, pp. 77–79). A fourth witness testified that he presumed that one of the waitresses at the inn was working as a prostitute, "on her past reputation" (R. 33; see Ex. 2, pp. 84–88). A fifth witness testified that some of the girls at the inn asked him and a friend "to go upstairs to bed with them" (R. 34; see Ex. 2, pp. 102–104).

[5] The testimony of these witnesses is narrated at pages 23–27, 29–30, and 32–34 of the record.

(R. 10–11). The court held that under the deportation statute the decision of the Secretary of Labor was final, and that the courts were without authority to weigh the evidence or to substitute their judgment as to the merits of the case (R. 11). In the present proceeding, the court below stated that upon examination of the record in the first case it was convinced that that case had been properly decided (R. 42).

It is, of course, clear that the decision of the administrative officer charged with the duty of issuing deportation orders is final. The statute (p. 3, *supra*) so provides. However, although no direct review of such a decision may be had in the courts, a collateral review by way of habeas corpus may be secured to the extent of determining whether the deportation proceeding so lacked the elements of a fair hearing that it can be said that the alien was deprived of due process of law. *Bridges* v. *Wixon,* 326 U. S. 135, 156, dissent, pp. 166–167; *Vajtauer* v. *Commissioner of Immigration,* 273 U. S. 103, 106; *Bilokumsky* v. *Tod,* 263, U. S. 149, 153. In such a collateral review, "the alien does not prove he had an unfair hearing merely by proving the decision to be wrong (*Tisi* v. *Todd,* 264 U. S. 131, 133) or by showing that incompetent evidence was admitted and considered. *Vajtauer* v. *Commissioner, supra,* p. 106." *Bridges* v. *Wixon, supra,* at 156. And it is enough that there is "some evidence to support

the deportation order." *Id.*, p. 149. Tested by these standards, the proceeding in petitioner's case was not violative of due process. The evidence summarized in footnotes 2 and 4, *supra*, pp. 2-8, was sufficient to support the warrant of deportation. Furthermore, the hearing was not rendered unfair by reason of the fact that affidavits were admitted. There was no violation of the applicable regulations in this respect. The Immigration Rules and Regulations of January 1, 1930, then in effect, did not proscribe the use of affidavits in a deportation proceeding (see Rule 19, Subdivision D). And, since petitioner had been accorded an opportunity to cross-examine the affiants (*supra*, p. 7), it was permissible to receive and to consider the affidavits in support of the charges. *Hays* v. *Zahariades*, 90 F. 2d 3 (C. C. A. 8), certiorari denied *sub nom. Zahariadis* v. *Hays*, 302 U. S. 734; *Ranieri* v. *Smith*, 49 F. 2d 537 (C. C. A. 7), certiorari denied, 284 U. S. 657; *Ghiggeri* v. *Nagle*, 19 F. 2d 875, 876 (C. C. A. 9); *In re Giacobbi*, 32 F. Supp. 508, 517 (N. D. N. Y.), affirmed, 111 F. 2d 297 (C. C. A. 2).[6]

3. Petitioner's final contention (Pet. 21, 23, 24, 40–41) that the deportation warrant is void be-

[6] *Hanges* v. *Whitfield*, 209 Fed. 675 (N. D. Iowa), upon which petitioner relies (Pet. 23, 27–28), is not, as the court below stated in its first opinion (R. 10), "at variance with the general rule," for the reason that in that case the alien had been denied the right to examine the affiants at the hearing.

cause it was issued by an assistant to the Secretary of Labor instead of by the Secretary of Labor is plainly without merit. It has uniformly been held that ~~an~~ assistants to the Secretary of Labor ~~was~~ were authorized to issue deportation warrants. See *Restivo* v. *Clark,* 90 F. 2d 847, 850 (C. C. A. 1); *Werrman* v. *Perkins,* 79 F. 2d 467, 468–469 (C. C. A. 7); *United States ex rel. Petach* v. *Phelps,* 40 F. 2d 500, 501 (C. C. A. 2); *In re Giacobbo,* 32 F. Supp. 508, 515 (N. D. N. Y.), affirmed, 111 F. 2d 297 (C. C. A. 2); *United States ex rel. Constantino* v. *Karnuth,* 35 F. 2d 601 (W. D. N. Y.), affirmed, 31 F. 2d 1022 (C. C. A. 2), certiorari denied, 280 U. S. 570; *Hajdamacha* v. *Karnuth,* 23 F. 2d 956, 958 (W. D. N. Y.).[7]

CONCLUSION

The case was correctly decided below, and there is no question of importance or conflict of de-

[7] The Act of March 4, 1927, c. 498, 44 Stat. 1415 (5 U. S. C. 613a), provides for two assistants to the Secretary of Labor who "shall perform such duties as may be prescribed by the Secretary of Labor or required by law." While petitioner asserts (Pet. 41) that there was a later amendatory provision authorizing the "Assistant Secretary" to issue warrants of deportation, he does not cite the amendment, and we have found no such amendment. It may be that petitioner is referring to 8 U. S. C. 458 (a) Act of June 28, 1940, c. 439, Title III, sec. 37, 54 Stat. 675), which authorizes the Attorney General, to whom the administration of the immigration laws has been transferred to exercise his authority under those laws through such officers of the Department of Justice as he ~~might~~ designate.

cisions involved. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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